(16,350.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 211.

SARAH A. OAKES, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 22, 1898.

1 In the Court of Claims.

SARAH A. OAKES
vs.
THE UNITED STATES. } No. 17818.

I.—*Petition.*

The original petition of Sarah A. Oakes, heir-at-law of Hugh Worthington, deceased, was filed December 1, 1892, and subsequently, to wit, on January 9, 1895, on motion of claimant and by leave of court, an amended petition was filed and is as follows:

Amended Petition. Filed January 9, 1895.

To the Hon. Chief Justice and judges of the Court of Claims:

The petition of Sarah A. Oakes respectfully represents that she is a citizen of the United States and a resident of the city of Metropolis, in the State of Illinois.

II.

Your petitioner further represents that she is the daughter and sole heir-at-law of the late Captain Hugh Worthington, deceased, late of the city of Metropolis, in the State of Illinois.

III.

2 That prior to the late war, to wit, on or about the 29th day of November, 1858, Capt. Hugh Worthington, your petitioner's father, purchased a three-fifths interest in the steamboat *Eastport*, a staunch vessel of 570$\frac{34}{95}$ tons burden, duly enrolled at the port of Paducah, Kentucky. Said vessel was built in the year 1852, and her length was 230 feet and her breadth 32 feet and her depth 8 feet; that she was fully equipped with boilers, engines, and all necessary appurtenances for a steam vessel of the first class for the New Orleans trade.

IV.

That after the purchase of said vessel she was plying between Nashville, Tenn., and New Orleans, La., and continued in that trade until the blockade of the Mississippi river by the insurgents in the spring of 1861.

V.

That for a few months after the outbreak of the war she plied between points on the Ohio river until the month of August, 1861, when she was tied up at Paducah, Kentucky, her home port, and there remained until about the last day of August, 1861.

VI.

That about the last day of August, 1861, the said vessel was taken, without the knowledge, consent, or procurement of the said owner,

Capt. Hugh Worthington, who was then and had ever since the year 1858 been a citizen and resident of the State of Illinois and had never been a resident of an insurrectionary State, by Capt. Elijah Wood, who had formerly been the captain of the said vessel, and run up the Tennessee river to a point near the mouth of the Sandy river.

3 VII.

That some time after said vessel was so taken up the said river, and prior to the month of February, 1862, she was captured and taken possession of by the insurgents, and work was begun upon her to convert her into a Confederate war vessel.

VIII.

That in the month of February, 1862, while work was in progress, and before its completion and before the said vessel had been used in any hostile demonstration against the United States, the said vessel was recaptured by the United States naval forces, on the Tennessee river near Cerro Gordo, Tenn., said capture having been made by the United States gunboat *Conestoga*, under command of Commodore Foote, U. S. Navy, and the immediate command of John A. Dahle, U. S. N.

IX.

That after her recapture by the United States she was immediately taken to Mound City, Illinois, where she was converted, by the United States, into an ironclad gunboat for service upon the western rivers, as part of the United States fleet, and about the first day of July, 1862, she went into commission as such warship with a full complement of officers and crew, and served as such in the various battles and engagements on the Mississippi river, under command of Commodore Porter, U. S. N., and the immediate command of Lieutenant Commander S. L. Phelps, until April 26, 1864, when she was blown up, while on the Red River expedition, near Grand Ecore, La.

4 X.

That Congress, by an act entitled "An act to confer jurisdiction on the Court of Claims to hear and determine the claim of the heir of Hugh Worthington for his interest in the steamer *Eastport*," approved July 28, 1892 (27 Stat. 230), conferred jurisdiction to hear and determine the just rights of your petitioner as heir-at-law of said Captain Hugh Worthington for his losses sustained by reason of the premises, and to render such judgment as shall be just.

XI.

Your petitioner further avers that her late father, Captain Hugh Worthington, was consistently loyal to the United States during the late war, and gave no aid or comfort to the late rebellion; that before and during the entire war he was a citizen of and resident of

the State of Illinois, and never during the war resided either temporarily or permanently in an insurrectionary State; that during the war he was an officer in the civil service of the United States, to wit, a deputy collector of customs, having been appointed to said office under the administration of President Lincoln.

XII.

Your petitioner further shows that the rental value of said vessel during the time she was engaged in the service of the United States was $200 per day, and the value of the vessel at the time of her recapture was reasonably worth $70,000, and your petitioner avers that she is justly entitled to recover against the United States the said sums under the provisions of the said act of Congress aforesaid.

5 *Prayer.*

The premises considered, your petitioner prays judgment against the United States for three-fifths of the value of the said vessel, to wit, ⅗ of $70,000, amounting to $42,000, and ⅗ of the rental, @ $200 per day, the time she was in actual service of the United States as a warship, to wit, from June 30, 1862, to April 26, 1864, 634 days, @ $120 per day, amounting to $76,080, amounting in the aggregate to one hundred and eighteen thousand and eighty dollars ($118,080.00), besides costs.

SARAH A. OAKES.

ROBERT W. McCARTNEY,
Attorney for Claimant.
JOHN C. FAY,
CHARLES M. SHELLEY,
Of Counsel.

STATE OF ILLINOIS, }
County of Massac, } ss:

Sarah A. Oakes, being duly sworn, says that she is the claimant in the foregoing petition, and she knows the contents thereof; that the matters therein set forth of her own knowledge are true, and those stated upon information and belief she believes to be true. Deponent further says that she has at all times borne true faith and allegiance to the United States, and gave no aid or comfort to the late rebellion, and that the sum claimed in the foregoing petition is just, exclusive of all set-offs or just grounds of defence.

SARAH A. OAKES.

Sworn and subscribed before me this 7th day of January, A. D. 1895.

[SEAL.] WILLIAM A. McBANE,
Notary Public.

6 II.—*Traverse. Filed April* 4, 1895.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

J. E. DODGE,
Assistant Attorney General.

7 III.—*Findings of Fact and Conclusion of Law.*

This case having been heard before the Court of Claims, the court on the evidence and after hearing the argument of counsel, makes the following

Findings of Fact.

I.

At the outbreak of the war of the rebellion the steamer *Eastport*, duly enrolled on the 29th November, 1858, at Paducah, Ky., of 570$\frac{34}{95}$ tons burthen, commanded by Capt. Elijah Wood, was plying between the ports of Nashville, Tenn., and New Orleans, La., engaged in the cotton trade.

II.

After the commencement of the war aforesaid the vessel under the command of said Captain Wood continued to ply between points on the Ohio river until May, 1861, when, in consequence of the blockade of the Mississippi river by the Federal forces at Cairo, Ill., she was tied up at Paducah, Ky., where she remained until August following. During the time the vessel was tied up at Paducah, Ky., she was repaired extensively, the work being done under the orders of the said Captain Wood and Hugh Worthington.

III.

About the last of August or early in September, 1861, when the armed forces of the United States were about to take possession of Paducah, Ky., and while the vessel was in the possession and under the control of Capt. Elijah Wood aforesaid, he took said vessel, with a small crew of men, without the knowledge or consent of Hugh Worthington, one of the owners, from Paducah, Ky., and ran her up the Tennessee river, within the lines of the Confederate forces, to

a place near the mouth of the Sandy river, a few miles above Fort Henry.

What disposition was made of the vessel by Captain Wood does not appear, though the Confederate Archives office show- as follows:

Under date of October 31, 1861, Gen. L. Polk, C. S. army, telegraphed from Columbus, Ky., to the Secretary of the Navy, C. S., that "the price of the steamer *Eastport* is $12,000;" and on the same date J. P. Benjamin, acting Secretary of War, C. S., telegraphed to Gen. L. Polk directions to "buy the str. *Eastport* if thought worth $12,000 demanded."

Under date Nov. 28, 1861, Gen. L. Polk, in a letter from Columbus, Ky., addressed to Gen. A. S. Johnston, C. S. A., stated that he bought the steamer *Eastport* by authority of the Secretary of the Navy.

8 Under date of January 5, 1862, Gen. L. Polk wrote to P. J. Benjamin, Secretary of War, C. S., as follows: "By virtue of the authority from the War Department of October 31, I bought the steamer *Eastport*, and she is now undergoing the necessary alterations to convert her into a a gunboat."

Under date of January 16, 1862, J. P. Benjamin, Secretary of War, C. S., wrote to Gen. L. Polk as follows: "I shall order the necessary funds forwarded at once for the *Eastport*."

Under date of February 2, 1863, General Polk in a statement to the C. S. Secretary of War of the disbursement of certain moneys, gives as one item, "Am't expended in purchase of steamer *Eastport* as per receipt of Maj. Peters, A. Q. M., $9,688.92."

No further information on the subject of the within inquiry has been found in said archives.

By authority of the Secretary of War:

F. C. AINSWORTH,
Colonel, U. S. Army, Chief of Office.

Whether the sum of money stated therein was paid to Captain Wood does not appear, nor whether he ever rendered an account thereof to the other owners, though a few months after the vessel was so run up the Tennessee river he returned to Paducah, Ky., and resumed his residence there, and died about the close of the war.

IV.

Some time between September, 1861, and February 7, 1862, the vessel was in the possession of the Confederate forces, but whether by reason of capture or purchase from said Captain Wood does not appear, and prior to the latter date was taken by said forces to near Cerro Gordo, Tenn., and work was there commenced to transform her into a gunboat for use in the Confederate service.

V.

On February 7, 1862, and while said vessel was lying under the bank of the river and being converted into a gunboat, for use in the Confederate service as aforesaid, with the iron and other material

therefor on board, but before her completion and before she had been used, or was in condition for use in any hostile demonstration against the United States, she was captured from the enemy near Cerro Gordo landing on the Tennessee river, "by the naval forces on the western rivers, commanded by Commodore A. H. Foote, U. S. N.," then "under the control of the War Department," *i. e.*, by detachments of men in small boats from the gunboats *Tyler*, *Lexington*, and *Conestoga*, and taken to Mound City, Ill., on the Ohio river, where she arrived about February 26, following. At the time of said capture the vessel was dismantled, her upper works, cabin, pilot and wheel-house having been cut away. She had also been scuttled in three places, to prevent her capture by the United States forces, by reason of all which she was damaged about $10,000.

In the capture aforesaid the detachments of men boarded the vessel under fire from the enemy, but from what number of men or whether the firing was from the vessel or from the land does not appear.

At the time of the capture aforesaid A. H. Foote was a captain in the United States Navy, serving under the following commission:

9 Abraham Lincoln, President of the United States of America, to all who shall see these presents, Greeting:

Know ye that, reposing special trust and confidence in the patriotism, valor, fidelity, and abilities of Andrew H. Foote, I have nominated and, by and with the advice and consent of the Senate, do appoint him a captain in the navy from the 29th of June, 1861, in the service of the United States. He is therefore carefully and diligently to discharge the duties of a captain by doing and performing all manner of things thereunto belonging; and I do strictly charge and require all officers, seamen, and marines under his command to be obedient to his orders as a captain; and he is to observe and follow such orders and directions from time to time as he shall receive from me or the future President of the United States of America, or his superior officer set over him, according to the rules and discipline of the navy. This commission to continue in force during the pleasure of the President of the United States for the time being.

Given under my hand, at Washington, this fifth day of August, in the year of our Lord one thousand eight hundred and [L. S.] sixty-one, in the eighty-sixth year of the Independence of the United States.

ABRAHAM LINCOLN.

By command of the President of the United States of America.

GIDEON WELLES,
Secretary of the Navy.

Registered.
WM. P. MORAN.

And under the following order from the Secretary of the Navy:

NAVY DEPARTMENT, *August* 30, 1861.

SIR: You have been selected to take command of the naval operation upon the western waters now organizing under the direction of the War Department.

You will therefore proceed to St. Louis, Missouri, with all practicable despatch and place yourself in communication with Major General J. C. Fremont, U. S. Army, who commands the army of the West. You will co-operate fully and freely with him as to your movements.

Requisitions must be made upon the War Department through General Fremont, and whatever the army cannot furnish the navy will endeavor to supply, having due regard to its operations on the coast.

The western movement is of the greatest importance, and the department assigns you this duty having full confidence in your zeal, fidelity, and judgment.

I am, respectfully, GIDEON WELLES.

Captain Andrew H. Foote, U. S. Navy, Washington, D. C.

True copy from the records of the Bureau of Navigation, Navy Department, Apr. 3, 1895.

F. M. RAMSAY,
Chief of Bureau.

At the same time Lieutenant S. L. Phelps was in command of the naval squadron attacking Fort Henry he was also serving as lieutenant commanding the U. S. gunboat *Conestoga* under the following commission:

Franklin Pierce, President of the United States of America, to all who shall see these presents, Greeting:

Know ye that, reposing special trust and confidense in the patriotism, valor, fidelity, and abilities of Seth Ledyard Phelps, I have nominated and, by and with the advice and consent of the Senate, do appoint him a lieutenant in the navy from the 14 September, 1855, in the service of the United States. He is therefore carefully and diligently to discharge the duties of a lieutenant by doing and performing all manner of things thereunto belonging; and I do strictly charge and require all officers, seamen, and marines under his command to be obedient to his orders as a lieutenant; and he is to observe and follow such orders and directions from time to time as he shall receive from me or the future President of the United States of America, or his superior officer set over him, according to the rules and discipline of the navy. This commission to continue in force during the pleasure of the President of the United States for the time being.

Given under my hand, at Washington, this twenty-fourth day of

July, in the year of our Lord one thousand eight hundred
[L. S.] & fifty-six, and in the eighty-first year of the Independence of the United States.

FRANKLIN PIERCE.

By command of the President of the United States of America.
J. C. DOBBIN,
Secretary of the Navy.

Registered. No. 29. The lowest number of same date takes rank.

L. B. HARDIN.

11 And also under the following order of the Secretary of the Navy:

NAVY DEPARTMENT, *June* 19, 1861.

SIR: You are hereby detached from special duty at Washington, D. C., and you will proceed to Cincinnati, Ohio, and on your arrival report to Commander John Rodgers for special duty under his command.

You will transfer to Lieutenant James M. Gillis the work of the Chili astronomical expedition.

I am, respectfully, GIDEON WELLES.

Lieutenant S. L. Phelps, U. S. Navy, Washington, D. C.

Immediately after the capture of the vessel aforesaid Flag Officer Foote reported his operations, together with the report of Lieutenant Phelps, to the Secretary of the Navy; which reports were communicated to Congress. Report Secretary of the Navy, with appendix containing reports from officers, December, 1862, pp. 460, 461, *et seq.*

At the time of the capture of said vessel no land forces were near the scene of capture and none took any active part therein.

VI.

After the vessel was brought to Mound City, Ill., she was converted into a gunboat by the United States, on the recommendation of Commodore Foote, and thereafter, about August, 1862, went into commission as such with a full complement of men and
12 officers of the United States Navy, and was so used on the Mississippi river as a part of the Mississippi squadron. This vessel, with others in like service, was turned over by the War Department to the Navy Department on the 1st October, 1862, pursuant to the act of Congress of July 16, 1862 (12 Stat. L., 587).

Prior to October 1, 1862, vessels in the United States Navy, including the gunboats *Tyler*, *Lexington*, and *Conestoga*, performing service on the western waters, were under the control of the War Department.

The vessel so captured continued in active service as a gunboat until April 17, 1864, when she was sunk by being run on a torpedo,

and afterwards, April 26, 1864, was blown up by her commander near Grand Ecore, La., to prevent her capture by the Confederates.

VII.

At the time the vessel was run up the Tennessee river, as set forth in finding III, she was a staunch vessel, about 10 years old, well equipped with machinery, in good condition, of the reasonable value of $40,000, and when captured by the United States forces, as set forth in finding V, the vessel in her then condition was reasonably worth $30,000.

VIII.

During the time the vessel was in the use and employment of the United States as hereinbefore found, the fair and reasonable rental or annual charter of the same for commercial use, without crew or propulsion, less the cost and time of putting her in repair, was $150 per day, that being the usual price per day paid by the quartermaster department for like vessels during that period.

IX.

In July, 1862, certain proceedings were had in the United States district court for the southern district of Illinois concerning the capture of the vessel as follows:

Record U. S. District Court, Southern District Illinois.

In the District Court of the United States for the Southern District of Illinois.

THE UNITED STATES } *vs.* STEAMBOAT EASTPORT. } In Admiralty.

Be it remembered that heretofore, to wit, on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, came Lawrence Weldon, Esq., attorney of the United States for the southern district of Illinois, and filed in the office of the clerk of the district court of the United States for said southern district of Illinois a libel against the above-named steamboat, which said libel was and is in the words and figures following, to wit:

Libel.

UNITED STATES OF AMERICA, *Southern District of Ills.* }

District Court.

To the Hon. S. H. Treat, judge of said district:

L. Weldon, district att'y of said district, would represent that on or about the 20th day of June, A. D. 1862, in the Miss. river near Columbus, Ky., there was seized by Geo. D. Wise, captain and ass't

qrm., with gunboat flotilla (and which he hereby reports for condemnation) the steamer *Eastport*, and which was brought into said district. Said seizure was made for the reason that said
13 steamer was used by and with the knowledge and consent of the owner in aiding the present rebellion against the United States, contrary to the act of Aug. 6, 1861. The said att'y therefore asks that process of attachment may issue against said steamer, and the monition of this hon. court, and that all persons having an interest in the same may be made parties herein, and that on a final hearing of this case your honor will adjudge and decree condemnation of said boat and order that the same may be sold.

L. WELDON.

(Indorsed:) Filed July 17, 1862. S. A. Corneau, cl'k.

Whereupon a monition was issued out of the office of the clerk of said court as prayed in said libel; which said monition, the marshal's return thereto, together with certificate of publication, are in the words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

The United States of America to the marshal of the southern district of Illinois, Greeting:

Whereas a libel has been filed in the district court of the United States, in and for the southern district of Illinois, on the 17th day of July, in the year of our Lord one thousand eight hundred and sixty-two, by L. Weldon, district attorney of the United States, and Geo. D. Wise, capt. and ass't qrm. gunboat flotilla, against the steamer *Eastport*, boats, tackle, apparel, and furniture, for reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons having or pretending to have, any right, title, or interest therein, may be cited to appear and answer, all and singular, the matters in said libel articulately propounded, and that this court would be pleased to pronounce for the sum of the damages alleged in said libel, besides costs of suit. You are therefore commanded to attach the said steamer *Eastport*, boats, tackle, apparel, and furniture, and to detain the same in your custody until the further order of this court respecting the same, and to give notice, by publication in the Illinois State Register, for fourteen days previous to the day of trial, and by netice posted up in the most public manner for the space of fourteen days at or near the place of trial of such seizure and libel, to all persons claiming the said steamer *Eastport*, boats, tackle, apparel, and furniture, or knowing or having anything to say why this court should not pronounce against the same, according to the prayer of the said libel, and that they be and appear before the said court, to be held in and for the southern district of Illinois, at the United States court-room, in the city of Springfield, in said district, on the first Monday in September next, if that be a

day of jurisdiction; if not, then on the first day of jurisdiction thereafter, at 10 o'clock in the forenoon of that day, then and there to interpose a claim for the same, and to make their allegations in that behalf.

And what you shall have done in the premises do you then and there make return, together with this writ.

Witness the Honorable Samuel H. Treat, judge of said court, this 17th day of July, in the year of our Lord one thousand eight hundred and sixty-two, and of our Independence the 87th year.

[L. S.] S. A. CORNEAU, *Clerk.*

Marshal's Return.

I hereby certify that on this 31st day of July, A. D. 1862, I have by virtue of this writ attached the within-named boat, and made proclamation of the same.

D. L. PHILLIPS, *U. S. M.*,
By ISAAC KEYES, *Deputy.*

Notice of Libel and Seizure.

UNITED STATES OF AMERICA, }
Southern District of Illinois, } ss:

Whereas, on the seventeenth day of July, A. D. 1862, Lawrence Weldon, United States district attorney, and Geo. D. Wise, capt. and ass't qrm. gunboat flotilla, filed a libel in the district court of the United States for the southern district of Illinois, against the steamer *Eastport*, boats, tackle, apparel, and furniture, in a cause of condemnation and forfeiture;

Whereas, by virtue of process in due form of law to me directed, returnable on the first Monday in September next, I have seized upon and taken the said steamer *Eastport*, boats, tackle, apparel, and furniture, and have the same in my custody:

Notice is hereby given that a district court of the United States will be held at the United States court-room, in the city of
14 Springfield, on the 1st Monday in September next, for the trial of the said premises, and the owner or owners, and all persons who have or claim any interest are hereby cited to be and appear at the time and place aforesaid to show cause, if any they have, why a final decree should not pass as prayed.

D. L. PHILLIPS,
U. S. Marshal.

Springfield, Ill., Aug. 4, 1862.

Publisher's Certificate.

The undersigned, publisher of the Illinois State Register, a newspaper published at Springfield, Illinois, does hereby certify that the annexed notice was published in said paper for fourteen days successively; the first publication thereof having been made on the 4th

day of August, A. D. 1862, and the last on the 19th day of August, A. D. 1862.

C. H. LANPHIER,
Publisher Illinois State Register.

And afterwards, to wit, on Tuesday, the 2d day of September, in the year last aforesaid, the following proceedings were had in said court in said case, and were entered of record, to wit:

THE UNITED STATES
against
THE STEAMER EASTPORT, &c. } In Admiralty.

The marshal having returned on the monition issued in this cause that he had attached the said steamer, her engines, boats, tackle, apparel, and furniture, and had given due notice to all persons claiming the same that the court would on this day proceed to the trial and condemnation thereof should no claim be interposed therefor:

This day came the libelants, by their advocate, L. Weldon, Esq., and upon their motion proclamation was made for all persons interested in the said steamer, her engines, boats, tackle, apparel, and furniture, to appear and interpose their claim therefor, and no person appearing to answer said motion, it is ordered, adjudged, and decreed by the court that the default of all persons be, and the same are, accordingly hereby entered, and that the allegations of the libel in this cause be taken as true against said property, and that the same be condemned as forfeited to the United States. It is further ordered, adjudged, and decreed by the court that the said steamer, her engines, boats, tackle, apparel, and furniture, be sold by the marshal under and by virtue of a writ of *venditioni exponas*, to be issued by the clerk of this court in accordance with the rules and practice of this court, and that upon the return thereof the marshal pay the proceeds of such sale into the depository of the court.

And afterward, to wit, on the 3rd day of December, in the year last aforesaid, the following further proceedings were had in said court in said cause, and were entered of record, to wit:

UNITED STATES on the Relation of GEORGE D. WISE
as Informer
vs.
STEAMER EASTPORT, &c. } In Admiralty.

And now came again The United States by their district attorney, and the marshal having reported to the court that the United States became the purchaser of the steamer *Eastport*, her engines, boats, tackle, apparel, and furniture, for the sum of ten thousand dollars. And the court, being now sufficiently advised in the premises, doth order, adjudge, and decree that there be allowed to the clerk for his services herein the sum of twelve dollars and eighty cents; to the marshal for his services herein the sum of one hundred and seventy-

one dollars and eighty-two cents, and to the district attorney for his services herein the sum of one hundred dollars (the court allowing the district attorney eighty dollars under the provisions of section 3 of the act of March 25th, 1862, entitled "An act to facilitate judicial proceedings in adjudications upon captured property, and for the better administration of the law of prize").

And it is further ordered, adjudged, and decreed by the court that the balance of the proceeds, amounting to the sum of nine thousand seven hundred and fifteen dollars and thirty-eight cents, be equally divided between the United States and George D. Wise, the informer herein.

15 UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

The United States of America to the marshal of the southern district of Illinois, Greeting:

Whereas a libel was filed in the district court of the United States for the southern district of Illinois on the 17th day of July, in the year of our Lord one thousand eight hundred and sixty-two, by the United States against the steamer *Eastport*, &c., praying that the same may be condemned and sold for the causes in said libel alleged; and

Whereas the said steamer *Eastport*, &c., has been attached by process issued out of the said district court in pursuance of the said libel and is now in custody by virtue thereof; and such proceedings have been thereupon had that by the final sentence and decree of the said court in this cause made and pronounced on the 2nd day of September, in the year of our Lord one thousand eight hundred and sixty-two, the said steamer *Eastport*, her boats, tackle, apparel, and furniture, was condemned and ordered to be sold by you, the said marshal, after giving 25 days' notice of such sale, according to law:

Therefore you, the said marshal, are hereby commanded to cause said steamer *Eastport*, her boats, tackle, apparel, and furniture, so condemned and ordered to be sold, to be sold in manner and form upon the notice and at the time and place by law required. And that you have the money arising from such sale in said court at Springfield on the 1st Monday of October, eighteen hundred and sixty-two, and that you then pay the same to the clerk of the court; and have you also then and there this writ.

Witness the Honorable Samuel H. Treat, judge of the said court, this 4th day of September, in the year of our Lord one thousand eight hundred and sixty-two, and of our Independence the 87th year.

[L. S.] S. A. CORNEAU, *Clerk.*

L. Weldon, Esq., proctor.

By virtue of this writ I have on this 4th day of October, 1862, at public auction, sold the within-named steamer *Eastport*, her engines,

tackle, boats, apparel, and furniture to the United States for the sum of ten thousand dollars.

D. L. PHILLIPS,
U. S. Marshal.

UNITED STATES OF AMERICA,
Southern District of Illinois, } ss:

I, M. B. Converse, clerk of the district court of the United States for the southern district of Illinois, do hereby certify the foregoing to be a true copy of the record and proceedings in a certain cause determined in said court wherein The United States on the relation of George D. Wise as informer, was libelant against The Steamer *Eastport*, as fully as the same now appear of record and on file in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at my office in Springfield, this 6th day of June, A. D. 1894.

[SEAL.] M. B. CONVERSE, *Clerk.*

Of these proceedings Hugh Worthington had no notice or knowledge until after the sale of the vessel, and until late in the year 1862, but whether or not the other owners of the vessel or Captain Wood had does not appear. Nor does it appear why the other owners of said vessel are not seeking pay for the value of their interest in said vessel.

X.

At the time said vessel was run up the Tennessee river by her captain, as set forth in finding III, she was owned by Hugh Worthington, Mrs. A. O. Woolfolk, and Charles W. Harrison, in the proportion of three-fifths to Hugh Worthington, and one-fifth each to Mrs. A. O. Woolfolk and Charles W. Harrison.

What has become of the interest of the said Mrs. A. O. Woolfolk and Charles W. Harrison in said vessel, or where they are, does not appear. Nor does it appear whether they received any portion of the money so paid by the Confederate government.

16 XI.

Prior to and during the war Hugh Worthington was a citizen and resident of Metropolis, Massac county, Ill., about 10 miles above Paducah, Ky. He was loyal to the United States throughout the war and gave no aid or comfort to the rebellion.

XII.

Hugh Worthington died intestate at Metropolis, Ill., March 31, 1876, never having received from the United States any compensation for the use or value of the vessel so captured. He owned no property at the time of his death. What debts, if any, exist against his estate does not appear.

XIII.

The claimant, Sarah A. Oakes, is the sole surviving heir-at-law and the next of kin of said Hugh Worthington, deceased, being his daughter.

Conclusion of Law.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant is not entitled to recover and the petition is dismissed.

IV.—*Opinion of the Court.*

PEELLE, *J.*, delivered the opinion of the court:

This action is prosecuted under the *act of July* 28, 1892 (27 Stat. L., 320), which reads as follows:

Whereas it is claimed the steamer *Eastport* was taken by the United States anno Domini eighteen hundred and sixty-two, and converted into a gunboat; and

Whereas it is claimed at the time of such taking, one Hugh Worthington, then of Metropolis, Massac county, Illinois, but since deceased, was the owner of three-fifths interest in said steamer, and no compensation has been paid to said Hugh Worthington or his heirs; and

Whereas his daughter, Mrs. Sarah A. Oakes, of Metropolis, Illinois, claims that Hugh Worthington was a loyal citizen, that she is his only heir-at-law, and is justly entitled to receive from the United States compensation for the value of her father's interest in said steamer: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That full jurisdiction is hereby conferred upon the Court of Claims to hear and determine what are the just rights in law of the said Sarah A. Oakes as heir of Hugh Worthington, deceased, and that from any judgment so entered by said Court of Claims, either party may appeal to the Supreme Court of the United States for compensation for the value of said Worthington's interest in said steamer *Eastport*. That upon proper petition being presented by said Sarah A. Oakes, her heirs, executors, or administrators to said court, said court is authorized and directed to inquire into the merits of said claim, and if on a full hearing the court shall find that said claim is just, the court shall enter judgment in favor of the claimant and against the United States for whatever sum shall be found to be due.

SEC. 2. That in case judgment shall be rendered against the United States, the Secretary of the Treasury shall be, and he is hereby, authorized and directed to pay the claimant, her heirs, executors, or administrators whatever sum shall be adjudged by the court to be due out of any money in the Treasury not otherwise appropriated.

The facts briefly stated are these:

Early in the late civil war the captain of the steamer *Eastport*, plying on the Mississippi and other western rivers, without the

consent or knowledge of the owners, took the vessel from Paducah, the port of her enrollment, to a place on the Tennessee river
17 within the lines of the Confederate forces. What disposition, if any, was made of the vessel by Captain Wood does not appear, but it does appear that soon thereafter the Confederate government purchased the vessel of some one, as set forth in the findings, and that thereafter the vessel was found in the possession of the Confederate forces at Cerro Gordo, on the Tennessee river, undergoing transformation into a gunboat for use in the Confederate service.

While the work was thus in progress, but before the vessel had been used in any hostile demonstration against the United States, the naval forces of the United States, under the command of Commodore Foote, captured the vessel and took her to Mound City, Ill., where she was reconstructed and made a gunboat, and thereafter used as such by the United States until sunk and blown up by her commander in April, 1864, to prevent her capture by the enemy.

The naval forces thus capturing the vessel were at the time under the control of the War Department.

Soon after the capture certain libel proceedings were had against the vessel in the district court of the United States for the southern district of Illinois, pursuant to the *confiscation act August* 6, 1861 (12 Stat. L., 319), wherein a decree in condemnation forfeiting the vessel to the United States was rendered and the vessel ordered sold at public auction, which was accordingly done by the marshal of the district and the vessel bid in, in the name of the United States, for $10,000, as set forth in the findings.

Of these proceedings Hugh Worthington, one of the owners, had no notice until after the sale and late in 1862.

The act conferring jurisdiction on the court it will be observed, at first reading, is not free from ambiguity.

By the first clause of section 1 jurisdiction is conferred on the court "to hear and determine what are the just rights in law of the said Sarah A. Oakes as heir of Hugh Worthington, deceased, * * * for compensation for the value of said Worthington's interest in said steamer *Eastport*."

In other words the act confers jurisdiction on the court to hear and determine in the first instance what the "just rights in law" of Hugh Worthington were at the time of capture or when the vessel was bid in by the United States and taken into the naval service of the Government.

There is no controversy about the claimant being the sole surviving heir of Hugh Worthington, deceased, so that her legal rights, whatever they may be, will depend upon the "just rights in law" of Hugh Worthington, through whom as such heir she claims and from whom her rights emanate.

This being determined in her favor, the second clause of the same section authorizes and directs the court, upon proper petition being presented, "to inquire into the merits of said claim, and if on a full hearing the court shall find that said claim is just, the court

shall enter judgment in favor of the claimant and against the United States for whatever sum shall be found to be due."

The justice of the claim must be measured by the law of the case, *i. e.*, "the just rights in law" of Hugh Worthington "for compensation for the value of said Worthington's interest in said steamer *Eastport*."

18 The act referred to is a remedial statute, and while, as in the case of the *United States v. Cummings* (130 U. S., 452), it would operate to remove the bar of any statute of limitations that might exist, no rights are conferred by the act, other than remedial, that did not exist before; and this is true whether the claimant or her ancestor, at any time prior to the passage of the act, could have maintained an action in this or any other court.

But the claimant contends that rights, other than remedial, are conferred by the special act, and in support of this contention several authorities are cited, the first of which is the *Fendall case* (16 C. Cls. R., 106). The action in that case was brought under an act of Congress giving this court "original legal and equitable jurisdiction of all claims now existing against the District of Columbia arising out of contract."

That was a general statute for a particular class of claimants, and is otherwise unlike the act in the case at bar; for in addition to the equitable jurisdiction thereby conferred, the cause of action must arise out of contract to entitle a claimant to sue. Jurisdiction was conferred upon the court to inquire into "*claims now existing against the District of Columbia arising out of contract*," thus showing that the right of recovery was based on pre-existing claims which arose out of contract.

In the *Boudinot case* (18 C. Cls. R., 716, 728) a special act was passed to enable an Indian, who claimed protection by reason of a treaty, "to bring suit in the Court of Claims against the United States Government to recover what may be due him in justice and equity for the loss inflicted upon him by reason of said seizure for an alleged violation of the internal-revenue laws of his property, a tabacco factory, its detention and damages thereto while under seizure, the value of the tobacco, material, and other personal property also seized, and the expenses to which he was subjected thereby."

That was a case in which no rights existed prior to the passage of the act. The act created a claim arising out of an alleged tort, after the act of the internal-revenue officers had been sustained by a decree of a United States district court, affirmed by the Supreme Court; and it authorized the claimant to recover, not what was legally due him, but "to recover what may be due him *in justice and equity for the loss inflicted upon him*" by the seizure, notwithstanding the legality of the seizure had been sustained by the courts.

So that there is no parallel between that case and the one at bar, for in the case at bar rights did exist, subject to the character of the recapture of the vessel and the legality of the condemnation proceedings, both of which the court is authorized to judicially inquire into,

to ascertain the "just rights in law" of the claimant and her ancestor.

In the *Carroll case* (22 C. Cls. R., 104–107) a special act of Congress conferred jurisdiction on the court to enable the persons therein stated to maintain an action against the District of Columbia "to recover such damages, if any, as they have sustained by reason of the change of grade and the regrading of the streets around square numbered seven hundred and thirty-six in the city of Washington, * * * and in ascertaining the damages sustained by the plaintiffs the court is directed to take into consideration the advantages, if any, to the said square numbered seven hundred and thirty-six resulting from the change of grade and regrading aforesaid."

19 The court in construing this act said:

The doctrine is indisputable that a municipal corporation is not liable to adjoining property-owners in damages for consequences incident to an improvement of the street so long as there is no encroachment upon the possession of the owner and the corporation is guilty of no negligence; but Congress in the passage of the act of our jurisdiction have waived that defense on the part of the District of Columbia, and referred to this court the question of the extent of the injury, if any, suffered by the claimants in the improvement of the streets of the city of Washington as the owner of block No. 736, known as Dudington square.

A cursory reading of the act will convince any one that by it certain rights were conferred on the claimants, *i. e.*, "to recover such damages, if any, as they have sustained by reason of the change of grade and the regrading of the streets," etc., thereby conferring rights that did not exist before; and in addition to this the court was directed in the ascertainment of the damages sustained, "to take into consideration the advantages, if any, to the said square numbered seven hundred and thirty-six resulting from the change of grade and regrading aforesaid."

The act not only conferred jurisdiction on the court to enable persons to maintain their actions, but it took away an important defense and substituted in its stead a right of recovery for such damages as they may have sustained resulting from the change of grade and regrading as therein stated.

In the case at bar there is no contention that any defense is taken away from the defendants by the act.

In the case of the *United States v. Alexander* (148 U. S., 186) the question did not arise. That was an action by the owner of a well which became dry by reason of the construction of an aqueduct to increase the water supply in the city of Washington. The first section of the act provided, among other things, in substance that a survey and map should be made of the lands necessary to extend the aqueduct and the mode of acquiring title to such lands by condemnation, and then the section provided that "any person or corporation having any estate or interest in any of the lands embraced in said survey and map, who * * * shall be *directly injured* in any property right, may, at any time within one year from the

publication of notice by the Attorney General, as above provided, file a petition in the Court of Claims of the United States, setting forth his right or title and the amount claimed by him as damages for the property taken or injury sustained."

The question presented in that case was as to whether the act restricted "the right to sue exclusively to the parties holding land within the limits of the survey."

The court held that "the plain meaning and intent of the legislature were to provide for the care of those whose lands or property rights were directly injured by the construction of the work proposed to be done, as well as for the care of those injured by the taking of their lands."

So the destruction of the well was held to be a "direct injury" to property recognized as such by law, and that inasmuch as the injury resulted from "the construction of a public work under authority of a statute" there could be a recovery both on principle and authority.

The foregoing are the authorities cited by the claimant in support of the proposition that the act under which suit is brought is not only remedial, but fixes the rights of the claimant, or gives her rights additional to those she had theretofore, *i. e.*, that the act merely devolves upon the court the duty of ascertaining the facts, and then, without reference to the legal rights of the parties at the time of the capture or sale of the vessel, to proceed to assess the damages, thereby constituting the court a jury shorn of judicial discretion.

Congress doubtless have the power to create a claim or cause of action, at least as against the United States and by the same act to provide a remedy for its enforcement, but they have not done so, in our opinion, in the remedial act under consideration.

By the act, jurisdiction is conferred on the court to hear and determine "the just rights in law" of the claimant, not simply as to her heirship, but in addition the "just rights in law" of Hugh Worthington, deceased, "for the value of said Worthington's interest in said steamer *Eastport*."

It is indeed true that a subsequent clause of the first section directs the court to inquire into the merits of the claim, and if it "shall find that said claim is just," it is directed to enter judgment "for whatever sum shall be found to be due."

But this is plainly governed by the preceding or jurisdictional clause, "that full jurisdiction is hereby conferred upon the Court of Claims to hear and determine what are the just rights *in law*" of the claimant as heir of the original owner; and when the statute subsequently says that the court shall enter judgment if it be found "that said claim is just," it means *just* "*in law*" as previously prescribed. The rights to be determined are legal rights.

With these preliminary remarks concerning the proper construction to be given to the act we will proceed to consider what "the just rights in law" of Hugh Worthington were "for compensation for the value of said Worthington's interest in said steamer *Eastport*."

The claimant's contention is that the vessel was captured by the

Confederate forces, but before she had been used or was in condition to use in any hostile demonstration against the United States she was recaptured by the naval forces of the United States; and that inasmuch as the claimant was a loyal citizen of the United States, residing at the time in a loyal State (Illinois), the title as between him and the United States was not divested by reason of such recapture; and that the condemnation proceedings in the district court of the United States for the southern district of Illinois under the *confiscation act August* 6, 1861 (12 Stat. L., 319), and the sale of the vessel under the decree of the court thereunder, were void for the want of an order of the President to seize and condemn the vessel, as held in the case of the *United States v. Winchester* (99 U. S., 372), and that the whole proceedings are, therefore, reviewable collaterally in this proceeding.

For these reasons, and to sustain a recovery, the claimant invokes the doctrine of the *jus postliminii* of the Roman law, which she contends was recognized in the *act March* 3, 1800, section 1 (2 Stat. L., 17), the first section of which is as follows:

That when any vessel other than a vessel of war or privateer, or when any goods which shall hereafter be taken as prize by any vessel, acting under authority from the Government of the United States, shall appear to have before belonged to any person or persons, resident within or under the protection of the United States, and to have been taken by an enemy of the United States, or
21 under authority, or pretence of authority, from any prince, government, or State, against which the United States have authorized, or shall authorize, defence or reprisals, such vessels or goods not having been condemned as prize by competent authority before the recapture thereof, the same shall be restored to the former owner or owners thereof, he or they paying for and in lieu of salvage, if retaken by a public vessel of the United States, one-eighth part, and if retaken by a private vessel of the United States, one-sixth part of the true value of the vessel or goods so to be restored, allowing and excepting all imposts and public duties to which the same may be liable. And if the vessel so retaken shall appear to have been set forth and armed as a vessel of war, before such capture or afterwards, and before the retaking thereof as aforesaid, the former owner or owners, on the restoration thereof, shall be adjudged to pay for and in lieu of salvage one moiety of the true value of such vessel of war or privateer.

The *act June* 30, 1864, section 29 (13 Stat. L., 314), now Revised Statutes, section 4652, incorporated the essential provisions of the act 1800, repealing, however, the specific rate of salvage therein fixed and providing that the sum to be paid as salvage cost and expenses should be fixed by the court in the event of a judgment of restitution.

The defendants' contention is, assuming that the vessel was captured by the Confederate forces, that her recapture by the naval forces of the United States, while under the control of the War Department, was a recapture by the Army of the United States, and

that by reason thereof the claimant's title was thereby divested and became vested in the United States.

And the defendants further contend that the proceedings in the district court, as before stated, were in conformity to law, and that if the title did not become vested in the United States by reason of the capture aforesaid, then the same did vest by reason of the sale had under the decree of condemnation.

The question for our consideration at this point, then, assuming, as the claimant contends, that the vessel was captured by the Confederate forces, is as to the character of the recapture by the naval forces of the United States on inland waters while under the control of the War Department.

The question is one by no means free from embarrassment, and, as far as we have been able to investigate, we have found no adjudicated case directly in point, and none has been cited by counsel on either side.

It is well settled and not questioned in this case that if the vessel in controversy was captured by the army the title thereto passed as soon as the capture was complete; while if captured by the navy as prize the title would not pass until condemned as provided by law. (Halleck's International Law, ch. 30, secs. 1 and 2; the ship *Resolution*, 2 Dall., 1; the *Adventure*, 8 Cranch, 221; the *Sally Magee*, 3 Wall., 451; the *Peterhoff*, Blatchford R., 620; the *Neustra*, etc., 108 U. S., 92.)

It will not be necessary to consider the question of a joint capture by the army and navy, as the findings show that the recapture, if such it was, was by the officers and men of vessels in the navy under the control of the War Department, so that the army and the naval forces within the territory or district of the captured vessel were necessarily acting under the orders of the same military commander.

Therefore if the recapture is to be treated as a marine capture, by the naval forces of the United States, such capture was presumably by order of the military commander and not under direction of naval or admiralty authority.

It cannot therefore be claimed, under the circumstances of this case, that the capture was made by the naval forces as such
22 acting under naval authority, as evidently contemplated should be done in order to dignify the capture as a marine prize of war. (See *Case* 680 *Pieces Merchandise*, 2 Sprague, 233, 235.)

To sustain a recovery herein the vessel must have been "taken as prize" within the meaning of the *act of* 1800 (*supra*). That war existed at the time there is no controversy.

In the *Case* 269½ *Bales of Cotton* (1 Woolworth, 236–256) the court, by Mr. Justice Miller, in speaking of the capture of cotton on the 26th September, 1862, by vessels used as transports on the Mississippi river said: "From that statement it is not at all inferable that the vessels named were any part of the naval force of the United States. Indeed, we know that no naval force then existed on those waters. The gunboats were made a part of the navy by order of the Government on the 1st day of October, several days after the

capture." And further along at page 257 it is said: "In short, the entire statement is consistent with the fact that the vessels and crews were in the employment of the War Department, and were used merely as transports to carry the troops; and it is consistent with no other supposition."

Thus showing that in the mind at least of that great jurist, to constitute a maritime prize the capture must have been by the naval forces as such, acting under naval authority, and that inasmuch as the naval vessels on the western or inland waters of the United States were not made a part of the navy until October 1, 1862, no such capture could have occurred prior thereto.

The *act July* 16, 1862 (12 Stat. L., 587), under which the capturing and other vessels were transferred to the Navy Department, recited and provided "that the western gunboat fleet constructed by the War Department shall be transferred to the Navy Department, which shall be hereafter charged with the expense of its repair, support, and maintenance," thus showing that prior to the transfer the capturing vessels had been constructed by the War Department, and by reference to the *army appropriation act July* 17, 1861 (12 Stat. L., 263), we find that the sum of $1,000,000 was appropriated for "gunboats on the western waters." Of this all persons were bound to take notice.

The findings (5) show that the vessel was captured from the enemy by detachments of men from the gunboats *Tyler*, *Lexington*, and *Conestoga* while she was lying under the banks of the river being converted into a gunboat for use in the Confederate service.

It is evident therefore that the vessel at the time of capture was accessible to the land forces, and as was said in the *Cotton Plant case* (10 Wall., 577, 580), "there was nothing in the situation of the property that required peculiarly a naval force or marine service to effect its capture. The seizure might as well have been made by a detachment from the army as by one from the navy."

In this same connection the court in the case of *Porter v. United States* (106 U. S., 607, 612), in construing the words "inland waters," as used in the *act July* 2, 1864, section 7 (13 Stat. L., 377), said: "The term 'inland' as here used, was evidently intended to apply to all waters of the United States upon which a naval force could go, other than bays and harbors on the seacoast. In most instances property of the enemy on them could be taken, if at all, by
23 an armed force without the aid of vessels of war. These were seldom required on such waters, except when batteries or fortified places near them were to be attacked in conjunction with the army."

This authority, however, is not cited for the purpose of showing that no marine capture could have occurred on the inland waters of the United States at the time of the recapture of the vessel in the case at bar, but rather as showing the intention of Congress by the act, as thus construed, that captures of enemies' property on the inland waters could be effected, "if at all, by an armed force without the aid of vessels of war."

If the land forces had aided in the recapture, it is clear that they

would have done so under the order of the same military commander, as both forces were subject to his orders.

While the land forces did not contribute immediately to the recapture of the vessel, they were at the time stationed at or near the mouth of the Tennessee river.

At the same time it is quite evident from the facts of the case that the land forces could have captured the vessel without the cooperation of the naval forces, in which case it is conceded the title would have become vested in the United States.

So, in view of what we have said, and the reasoning of the authorities cited, we hold that the vessel was captured by the army, and that therefore the title of the claimant's intestate thereby became divested and vested in the United States.

This being the holding of the court, it is unnecessary to consider the question of the legality of the condemnation proceedings in the district court for the southern district of Illinois; or the other, perhaps more important, question as to whether the captured vessel, which was undergoing conversion into a gunboat for use in the Confederate service, would fall within the meaning of the *act of* 1800 (*supra*), "as a vessel or war" as set forth in the first clause of the section quoted.

In view of the conclusion we have reached in the case, it is unnecessary to consider what may be the "just rights in law" of the claimant in the estate as "heir," or the legal effect of the statute in that regard authorizing her to bring this suit.

For the reasons stated the claimant is not entitled to recover, and the petition is therefore dismissed.

Weldon and Davis, JJ., were not present when this case was tried and took no part in the decision.

24 V.—*Judgment of the Court.*

At a Court of Claims held in the city of Washington on the 11th day of November, A. D. 1895, judgment was ordered to be *to be* entered as follows:

The court, upon due consideration of the premises, find for the defendants, and do order, adjudge, and decree that the petition of the claimant, Sarah A. Oakes, be dismissed.

BY THE COURT.

25 VI.—*Application for and Allowance of Appeal.*

SARAH A. OAKES
vs.
THE UNITED STATES. } No. 17818.

From the judgment rendered in the above-entitled cause on the 11th day of November, 1895, in favor of the defendants, the claimant, by her attorney of record, Charles M. Shelley, on the 3d day of

February, 1896, makes application for and gives notice of an appeal to the Supreme Court of the United States.

C. M. SHELLEY,
Att'y for Claimant.
JOHN C. FAY, *Of Counsel.*

Filed February 3, 1896.
Allowed in open court June 8, 1896.

WILLIAM A. RICHARDSON,
Chief Justice.

26 In the Court of Claims.

SARAH A. OAKES
vs.
THE UNITED STATES. } No. 17818.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the opinion of the court, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

Seal of Court of Claims.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 22d day of June, 1896.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: Case No. 16,350. Court of Claims. Term No., 211. Sarah A. Oakes, appellant, *vs.* The United States. Filed August 1st, 1896.